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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,343	02/04/2002	Nigel Peter Smith	85116	5889

7590 08/11/2003  
Welsh & Katz  
120 South Riverside Plaza  
22nd Floor  
Chicago, IL 60606-3913

EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

YK.

# Office Action Summary

Application No.

10/030,343

Applicant(s)

SMITH ET AL.

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6-14 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6-14 and 21 is/are rejected.
- 7) ☒ Claim(s) 3 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3732

## DETAILED ACTION

### *Claim Objections*

Claims 3 and 12 are objected to because of the following informalities.

In claim 3, line 3, delete "." to correct a typographical error.

In claim 12, it appears that "flow restriction" should be "flow restrictor." Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21, 2-4 and 6-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 21, lines 6-7, "restrain said active substance by surface tension from flowing under gravity from said reservoir" does not have adequate support in the disclosure which states that the active substance flows from the reservoir under gravity (page 8, lines 6-11). Further, it appears that the claimed device operates by capillary action wherein liquid flow from reservoir 18 is dependent upon the viscosity and surface tension of the liquid contained therein.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 21, 2-4 and 6-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3732

In claim 21, it is unclear what structure is being referred to by the “flow directing means”. Is it the slot and chamber (Figure 5) or the ramp surfaces 38a, 38b and vanes 40 (Figure 3)?

Claims 2-4 recite the limitation “said pumping action.” There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 7, line 2: “under gravity” is inconsistent with claim 21, which recites that flow does not occur under gravity.

Regarding claim 8, “a chamber” is a double inclusion at least in part of the flow directing means of claim 21. Where a claim directed to a device can be read to include the same element twice, the claim may be indefinite. (See MPEP 2173.05(o)).

Regarding claim 10, “closing means” appears to be a double inclusion of the “fluid dispensing surface” of claim 6.

Regarding claim 13, “venting means” appears to be a double inclusion of the “flow directing means” of claim 21.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21, 6 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Leonard et al. (US 6,178,564).

Leonard et al. disclose a dispense with a bottle or reservoir 18 for holding a liquid, a flow restrictor having an inlet 31, an aperture 38 and an outlet 44 and a dispensing plate or “flow directing means” 48 on fluid dispensing surface 40 to lead a stream of water into direct contact with the outlet of the flow restrictor. The aperture 38 of the Leonard et al. device is inherently sized so that the liquid in reservoir 18 is restrained from flowing under gravity to prevent

Art Unit: 3732

emptying itself at once (Figures 7 and 9, col. 4, lines 54-59, lines 66-67, col. 5, lines 1-2 and lines 27-67).

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:30 am and 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

AR *Anuradha Ramana*  
August 5, 2003

*Kevin Shaver*  
KEVIN SHAVER  
8/6/03  
SUPERVISORY PATENT EXAMINER  
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